

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

The Committee hereby submits its Proposed Decision and Notice of Intent to Adopt a Mitigated Negative Declaration on the Application for a Small Power Plant Exemption for the Modesto Electric Generation Station project (Docket Number 03-SPPE-01). We have prepared this document pursuant to the requirements set forth in the Energy Commission's regulations (20 Cal. Code of Regs., §§ 1934 et seq.) and the requirements of the California Environmental Quality Act and implementing Guidelines (14 Cal. Code of Regs, §§ 15000 et seq.).

Based upon the entirety of the record in this proceeding including the Small Power Plant Exemption Application, Applicant's Data Responses, the Energy Commission Staff's Draft and Final Initial Study and Proposed Negative Declaration, and comments by agencies and others, the Committee hereby recommends that the Application for the Small Power Plant Exemption be granted and that a Mitigated Negative Declaration be adopted, subject to the Conditions of Exemption set forth herein.

**We direct Energy Commission staff to file this document with the Office of Planning and Research and take all other necessary and appropriate action to ensure that opportunity for public and agency review, as required by the provisions of the Public Resources Code and Guidelines, is provided.**

Dated: November 7, 2003

**ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

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**JAMES D. BOYD**, Commissioner  
Presiding Committee Member

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**ROBERT PERNELL**, Commissioner  
Associate Committee Member

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA

APPLICATION FOR A SMALL POWER PLANT  
EXEMPTION BY THE MODESTO IRRIGATION  
DISTRICT FOR THE MODESTO ELECTRIC  
GENERATION STATION PROJECT (MEGS)

DOCKET No. 03-SPPE-01

**NOTICE OF AVAILABILITY OF THE PROPOSED DECISION/  
NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION  
AND NOTICE OF COMMITTEE CONFERENCE  
AND NOTICE OF COMMISSION HEARING**

**I. NOTICE OF AVAILABILITY**

The Committee issued the Proposed Decision/Notice of Intent to Adopt a Mitigated Negative Declaration for the Modesto Electric Generation Station on November 7, 2003. Copies of the document were sent to the Office of Planning and Research, as well as to those on the Proof of Service List, and are also available from the Energy Commission's Publications Unit, 1516 Ninth Street, MS-13, Sacramento, CA 95814. For a printed copy, call the Publications Unit at 916-654-5200 and ask for Publication No. P800-03-015. The document may also be viewed on the Energy Commission's Internet Web Site at: [[www.energy.ca.gov/sitingcases/ripon](http://www.energy.ca.gov/sitingcases/ripon)].

Members of the public and governmental agencies may submit written comments. The public comment period ends **December 8, 2003**. Twelve copies of all comments must be received no later than 5 p.m. on December 8, 2003 by the Energy Commission's Docket Unit, MS-4, 1516 Ninth Street, Sacramento, CA 95814. Please identify all comments with "Docket No. 03-SPPE-01."

**II. NOTICE OF COMMITTEE CONFERENCE ON THE PMPD**

**PLEASE TAKE NOTICE** that the Committee will conduct a public Conference to discuss the document as follows:

**Tuesday, December 2, 2003**  
**Beginning at 2 p.m.**  
Modesto Irrigation District Headquarters  
1231 11<sup>th</sup> Street  
Board Room  
Modesto, California 95354  
*[Wheelchair Accessible]*

Applicant, Staff, and all other formal parties wishing to participate at the Conference must file written comments. Comments shall be served and filed no later than **3:00 p.m. on November 25, 2003.** The comments shall also be sent by email to the parties and to the Hearing Officer. Members of the general public wishing to participate at this Conference are encouraged, but not required, to submit their written comments by the same date.

### **III. NOTICE OF COMMISSION HEARING**

**PLEASE TAKE FURTHER NOTICE** that the Energy Commission will conduct a hearing on the Proposed Decision and Mitigated Negative Declaration at its regularly scheduled business meeting as follows:

**WEDNESDAY, December 17, 2003**

Beginning at 10 a.m.  
First Floor Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814  
[*Wheelchair Accessible*]

The purpose of this hearing is to consider whether the Energy Commission should adopt the document. Members of the public are invited to participate and to offer comments at the hearing.

#### **Information on Public Participation**

For information concerning public participation at the Committee Conference and at the Commission hearing, contact the Commission's Public Adviser, Margret J. Kim, at 916-654-4489 or, toll free, at 1-800-822-6228; or e-mail: **[[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)]**.

Technical questions concerning the project should be addressed to James Reede, the Staff Project Manager, at (916) 653-1245 or email at: **[[jreede@energy.state.ca.us](mailto:jreede@energy.state.ca.us)]**.

Questions of a legal or procedural nature should be directed to Stanley Valkosky, the Hearing Officer, at (916) 654-3893.

If you require special accommodation to participate in either event, contact Lou Quiroz at (916) 654-5146 or email at: **[[lquiroz@energy.state.ca.us](mailto:lquiroz@energy.state.ca.us)]**. Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications, at (916) 654-4989 or email at: **[[energia@energy.ca.gov](mailto:energia@energy.ca.gov)]**.

Information concerning the status of the project, as well as notices and other relevant documents, will be posted on the Energy Commission's Internet web page at: [\[www.energy.ca.gov/sitingcases/ripon\]](http://www.energy.ca.gov/sitingcases/ripon).

**Schedule for Remainder of Proceedings**

<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
Comments Due for Committee Conference	11/25/03	3 p.m.
Committee Conference	12/2/03	Begins at 2 p.m.
Close of Comment Period	12/8/03	5 p.m.
Commission Hearing on PMPD	12/17/03	Begins at 10 a.m.

By Order of the Committee.

Dated November 7, 2003, at Sacramento, California.

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JAMES D. BOYD  
Commissioner and Presiding Member  
MEGS SPPE Committee

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ROBERT PERNELL  
Commissioner and Associate Member  
MEGS SPPE Committee

# MODESTO IRRIGATION DISTRICT ELECTRIC GENERATION STATION RIPON

Small Power Plant Exemption (03-SPPE-1)  
San Joaquin County



CALIFORNIA  
ENERGY  
COMMISSION

**PROPOSED SMALL POWER PLANT  
EXEMPTION DECISION AND  
NOTICE OF INTENT TO ADOPT A  
MITIGATED NEGATIVE DECLARATION**

NOVEMBER 2003  
P800-03-015



Gray Davis, Governor

**MODESTO IRRIGATION  
DISTRICT ELECTRIC  
GENERATION STATION  
RIPON**

Small Power Plant Exemption (SPP-1)  
San Joaquin County



**CALIFORNIA  
ENERGY  
COMMISSION**

**PROPOSED SMALL POWER PLANT  
EXEMPTION DECISION AND  
NOTICE OF INTENT TO ADOPT A  
MITIGATED NEGATIVE DECLARATION**

NOVEMBER 2010  
PGE-10-011



San Joaquin County

**CALIFORNIA ENERGY  
COMMISSION**

1516 9th Street  
Sacramento, CA 95814  
[www.energy.ca.gov/sitingcases/ripion](http://www.energy.ca.gov/sitingcases/ripion)



**JAMES D. BOYD**  
*Presiding Committee Member*

**ROBERT PERNELL**  
*Associate Committee Member*

**STANLEY W. VALKOSKY**  
*Hearing Officer*

**COMMISSIONERS-**

**WILLIAM J. KEESE**  
*Chair*

**ROBERT PERNELL**  
*Commissioner*

**ARTHUR H. ROSENFELD, Ph. D.**  
*Commissioner*

**JAMES D. BOYD**  
*Commissioner*

**JOHN L. GEESMAN**  
*Commissioner*

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## APPENDICES

**Appendix A:** Final Initial Study

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## I. INTRODUCTION

The California Energy Resources Conservation and Development Commission (Commission) possesses the exclusive authority to license thermal power plants of 50 megawatts (MW) or more in capacity.<sup>1</sup> This licensing process generally is known as the Application for Certification (AFC). It is equivalent to the environmental impact report (EIR) process under the California Environmental Quality Act (CEQA).<sup>2</sup>

The Commission may exempt a project not exceeding 100 MW in capacity from this licensing process if it finds that no substantial adverse impacts on the environment or on energy resources will result from the construction or the operation of the project.<sup>3</sup> This is known as the Small Power Plant Exemption (SPPE) process.<sup>4</sup>

The Commission is the lead agency under CEQA for all projects that it licenses or exempts from the licensing process.<sup>5</sup> Projects exempted remain subject to applicable local permitting requirements. (9/2/03 RT 36.)

### A. Project Considered

The Modesto Irrigation District (MID) is a public agency governed by an elected Board of Directors. It provides retail electric service to over 100,000 residential, commercial, industrial, and agricultural customers throughout its electric service

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<sup>1</sup> Pub. Resources Code, section 25500. All statutory references are to the Public Resources Code. Additional references are to various documentary Exhibits (Ex.) and to the reporter's transcript (RT) of various hearings.

<sup>2</sup>Section 21080.5; 14 Cal. Code of Regs., section 15251(k).

<sup>3</sup> Section 25541.

<sup>4</sup> See, 20 Cal. Code of Regs., sections 1934 et seq.

<sup>5</sup> Section 25519 (c); see also section 21067.

area. MID intends to develop, build, own, and operate the Modesto Electric Generation Station (MEGS) project. This is a nominal 95 MW electric generation plant which will occupy eight acres of a 12.25 acre site located in an existing industrially zoned area at South Stockton Avenue and Doak Boulevard in the City of Ripon, in San Joaquin County. The project also encompasses construction of approximately 0.25 miles of new 69-kV transmission line and fiber optic cable, about 0.25 miles of new eight inch gas supply pipeline, and water supply and wastewater tap lines. The attached Final Initial Study contains a map showing the locations of the power plant and its linear facilities. (Appendix A, Project Description Figure 4.)

The project is a simple-cycle power plant fueled by natural gas. It consists of two General Electric LM 6000 SPRINT turbines and ancillary equipment. Air emission controls are considered to be the Best Available Control Technology (BACT), and include a combustor water injection system, selective catalytic reduction (SCR), and continuous emissions monitoring of the exhaust stack. The project will also employ a Zero Liquid Discharge (ZLD) system, enabling recycling of waste streams for reuse within the facility and a lower non-potable water demand. It will use non-potable water from the City of Ripon's system as process make-up water. (9/2/03 RT 13-16; Exs. 1, 2, 3, 15, 22.)

## B. Project Objectives

The record establishes that MID desires electrical generation to meet its native load, as well as to potentially provide additional generation to the grid, if necessary<sup>6</sup>. As proposed, the MEGS project would operate at base load for

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<sup>6</sup> According to Applicant:

A peaker plant (two gas turbines in a simple-cycle configuration) would help MID with its seasonal load fluctuations (MID's load in the winter is roughly half of what it is in the summer). In addition, a peaker would provide MID with load following capability and electrical power which could be accessed quickly. A peaker plant could also provide temporary baseload power should it be needed during MID's summer peak, or if one of its baseload units was experiencing a planned or unplanned outage. It could also

approximately three months of the year during the food processing season and as a peaking plant during the remainder of the year. (5/16/03 RT 36-38; 9/2/03 RT16-20; Exs. 1, 26.) The evidence establishes these purposes would be frustrated were the project not built. (9/2/03 RT 107; Ex. 25.) The record also shows that MID considered alternative project locations, as well as alternative technologies to meet these project goals. (9/2/03 RT 106-108, 111-113; Ex. 25.)

On July 19, 2002, the Board of Directors decided that the simple-cycle configuration was the preferred alternative for meeting MID's needs.<sup>7</sup> (9/2/03 RT 13:11-15.) The Board also directed that MEGS be permitted for 8760 hours of annual operation for maximum operating flexibility.<sup>8</sup> (9/2/03 RT 148: 7-21, 150:6-9, 151:7-15.)

### C. Process Followed

We arrived at this Proposed Decision and Mitigated Negative Declaration via a comprehensive process which provided extensive opportunity for public review and comment.

After MID submitted its SPPE application for the MEGS project (Ex. 1) on April 21, 2003, Staff held a public workshop to discuss the project on May 16, 2003. This event was followed by the Committee's public Informational Hearing and Site Visit on the same day. Staff conducted another public workshop on June 13, 2003 before releasing its Draft Initial Study for public review and comment on June 20, 2003. Staff then held an additional workshop on August 8, 2003, and the Committee held its Prehearing Conference on August 18, 2003. Staff ultimately issued the attached Final Staff Assessment (Appendix A) on August

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provide temporary baseload power if there was a transmission system constraint. (Applicant's Opening Brief, p. 10.)

<sup>7</sup> See also Resolution No. 2002-97, included as Attachment A to Applicant's Opening Brief.

<sup>8</sup>This issue is discussed in the "**Energy Resources**" portion, below.

29, 2003, and the Committee conducted its public evidentiary hearing on September 2, 2003. Finally, the parties were given the opportunity to present written argument on relevant matters by filing Opening Briefs on October 1, 2003, and Reply Briefs on October 14, 2003.

This process engendered comment and participation both by public agencies and members of the public. Agencies included the Central Valley Regional Water Quality Control Board, the Department of Toxic Substances Control, the Department of Conservation, the San Joaquin Valley Air Pollution Control District, the City of Ripon's Department of Planning and Economic Development, and San Joaquin County's Office of Emergency Services, Department of Public Works, Environmental Health Department, and Community Development Department. Mr. Robert Sarvey intervened and participated as a party in this proceeding; several other individuals, including Ms. Pam Kaefer and Ms. Mercedes Lopez, offered public comment. (5/16/03 RT 49-55; 9/2/03 RT 74-78, 253-260, 382-391.)

This Decision serves two purposes. First, it contains this Committee's recommendation that the full Commission act to exempt the MEGS project from AFC licensing review.<sup>9</sup> Next, it also serves as a Notice of Intent to adopt a Mitigated Negative Declaration pursuant to CEQA.<sup>10</sup> In arriving at our recommendation, we have reviewed and carefully considered not only the environmental impacts of the project, but also the impacts to the electric transmission system and the project's effect upon energy resources.

As explained below, the evidence establishes that all impacts attributable to the project can be mitigated to insignificant levels. MID has agreed to implement the mitigation identified during this proceeding. We further specify Conditions of

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<sup>9</sup> 20 Cal. Code of Regs., section 1945.

<sup>10</sup> Section 21064.5; 14 Cal. Code of Regs., section 15072.

Exemption required to ensure adequate mitigation, as well as provide an established mechanism to monitor and ensure compliance with the conditions imposed.<sup>11</sup>

Finally, we have required that this document be circulated in accordance with applicable provisions of the CEQA Guidelines.<sup>12</sup> In addition, and as separately noticed, the Committee will conduct a public Conference to discuss the contents of this Proposed Decision on December 2, 2003, and the full Commission will consider whether to grant this application for an SPPE and adopt a Mitigated Negative Declaration at its regularly scheduled business meeting on December 17, 2003.

D. Further Information

All documents pertinent to this proceeding are available for public inspection at the Commission's Docket Unit, 1516 Ninth Street, MS-13, Sacramento, California 95814, and also on the Commission's web page at:

**[<http://www.energy.ca.gov/sitingcases/ripon/index.html>].**

Ms. Margret J. Kim, the Commission's Public Adviser, can provide information on public participation; she may be reached at 916-654-4486 or by email at: **[[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)].**

Dr. James Reede, the Staff Project Manager, can provide technical information at, 916-653-1245 or by email at: **[[jreede@energy.state.ca.us](mailto:jreede@energy.state.ca.us)].**

Procedural questions may be addressed to Stanley W. Valkosky, the Chief Hearing Officer, at 916-654-3893.

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<sup>11</sup> See, section 21081.6.

<sup>12</sup> See, 14 Cal. Code of Regs., sections 15072, 15073; see also 9/2/03 RT 28-32.

## II. ENVIRONMENTAL ASSESSMENT

This Proposed Decision and Mitigated Negative Declaration are based solely upon the record of this proceeding, including the documents reflected on the Exhibit List (Appendix C) and the evidentiary presentations.

### A. Standard Applied

The Initial Study performed for this Small Power Plant Exemption (SPPE) process is fundamentally a preliminary analysis to determine whether we must pursue our environmental impact report (EIR) equivalent Application for Certification (AFC) process or whether we may exempt the project from that process. In reviewing the evidence of record, and in deciding whether to grant the MEGS project an exemption, we have applied the “fair argument” standard.<sup>13</sup> Under this standard, we must require AFC level review if there is any substantial evidence in the record which supports a fair argument that the MEGS project may have a significant effect upon the environment.<sup>14</sup> In applying the fair argument standard, our task is not to weigh competing evidence and determine which is more persuasive, but rather to determine whether substantial evidence exists in the record to support the prescribed fair argument.<sup>15</sup> If such evidence is found, it cannot be overcome by substantial evidence to the contrary.<sup>16</sup>

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<sup>13</sup> Applicant and Staff submitted Briefs on this matter on May 30, 2003.

<sup>14</sup>Section 25541 refers to “substantial” adverse environmental impact. We believe this equates with the “significant” adverse environmental impact commonly referred to under CEQA.

<sup>15</sup>See, section 21080(c)(1); 14 Cal. Code of Regs., section 15070. See also, Staff’s May 30, 2003 Brief, pp. 2-4; 1 Kosta & Zischke, Practice under the California Environmental Quality Act (Cont. Ed. Bar), pp. 273-275.

<sup>16</sup>For example, if qualified experts disagree about the likelihood of an environmental impact, a lead agency must assume that a significant adverse impact may occur and must then prepare an EIR. See, 14 Cal. Code of Regs., section 15064(g); 1 Kosta & Zischke, pp. 297-298; Staff’s May 30, 2003 Brief, pp. 6-7.

We reviewed the evidence in light of the record as a whole in order to determine whether substantial evidence of a significant adverse impact attributable to the MEGS project exists. For these purposes, “substantial evidence” includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>17</sup> It does not include “argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.”<sup>18</sup>

Opinions submitted by qualified experts, and based upon reliable and credible foundations, are generally conclusive.<sup>19</sup> Statements by members of the public may constitute substantial evidence if these statements are supported by an adequate factual foundation.<sup>20</sup> Conversely, fears and desires of project opponents do not qualify as substantial evidence. Neither do unsubstantiated opinions, concerns, suspicions, speculation, or conjecture about a project’s potential impacts.<sup>21</sup> The mere existence of public controversy over the environmental effects of a project does not preclude the adoption of a Negative Declaration or similar document obviating the necessity of a full EIR level review of a project.<sup>22</sup> To effectively protest the adoption of a Mitigated Negative Declaration, or in this instance an SPPE, a project opponent must demonstrate

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<sup>17</sup> Section 21080(e)(1).

<sup>18</sup>Section 21080(e)(2).

<sup>19</sup>We are, however, not bound by an expert’s opinion on the policy question of what constitutes “significance” for a given impact. Similarly, conclusions reached by agency staff or bodies subordinate to agency decision-makers on the ultimate issue of whether an impact is “significant” do not constitute substantial evidence; they are inferences that may be disregarded. An agency’s determination regarding the significance of an impact is highly discretionary. (See, 1 Koska & Zischke, pp. 277-279; 281-283, 287; Staff’s May 30, 2003 Brief, pp. 6-7.)

<sup>20</sup> 1 Kosta & Zischke, pp. 283-284.

<sup>21</sup> Section 21082.2(c); see also, Applicant’s Opening Brief, p. 4. The concerns may, however, trigger a duty for a governmental agency to investigate alleged impacts. 1 Koska & Zischke, p. 285.

<sup>22</sup> Section 21082.2(b).

by substantial evidence that the mitigation measures required are inadequate and that the project as mitigated may have a significant adverse effect on the environment.

B. Summary of Impacts

The evidence of record supports the characterization of impacts as summarized below:<sup>23</sup>

<i>Topic Area</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact With Mitigation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
<b>ENVIRONMENTAL</b>				
Agricultural Resources				X
Air Quality		X		
Biological Resources		X		
Cultural Resources		X		
Energy Resources		X		
Geology and Paleontology		X		
Hazardous Materials and Waste		X		
Hydrology and Water Quality			X	
Land Use and Recreation			X	
Noise		X		
Public Health			X	
Socioeconomics				X
Traffic and Transportation			X	
Visual Resources		X		
Waste Management			X	
Worker Safety				X
<b>ENGINEERING</b>				
Transmission Line Safety and Nuisance			X	
Transmission System Engineering		X		

The evidentiary bases for these characterizations are set forth below.

<sup>23</sup> This modified checklist format largely reflects the conclusions contained in the Final Initial Study (Appendix A, p. iv), as amended (Appendix B). We have, however, modified the original to reflect our conclusions based on the evidence of record.

C. Environmental Areas with No Impacts

The evidence of record is uncontroverted in establishing that the MEGS project will have no impacts to **Agricultural Resources** or in the disciplines of **Socioeconomics** and **Worker Safety**. (9/2/03 RT 57-58, 60-61; Exs. 1, 2, 5, 22, 25.) Therefore, no further discussion or Conditions of Exemption are required.<sup>24</sup>

D. Environmental Areas with Less than Significant Impacts

Next, the uncontradicted evidence of record establishes that the project will result in a less than significant impact in five environmental topics areas. No Conditions of Exemption are required for two of these areas – **Land Use and Recreation** as well as **Traffic and Transportation**. (9/2/03 RT 58-59, 85-86; Exs. 1, 2, 5, 15, 22, 25.) They require no further discussion.

The **Waste Management** topic engendered clarifying discussion at the evidentiary hearing. This discussion did not, however, indicate that environmental impacts would occur or that Conditions of Exemption (COEs) were required. Rather, it revolved around characterization of the Site Assessments which had occurred in response to sampling requests from Staff and the Department of Toxic Substances Control. (9/2/03 RT 98-104.) The evidence establishes that the MEGS project will not cause a significant environmental impact in this area. (Exs. 1, 2, 5, 8, 15, 19, 22, 25, 26; see also Applicant's Opening Brief, p. 7, fn. 5.)

Two of the topics in the "less than significant impact" category require COEs. As discussed in the Final Initial Study (Appendix A), the MEGS project will not create adverse impacts in the technical area of **Hydrology and Water Quality**. (9/2/03 RT 83-84; Exs. 1, 2, 3, 5, 15, 22, 24.) Moreover, potential wastewater discharge

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<sup>24</sup> Although the Final Initial Study includes the topic of **Energy Resources** within this category, we discuss this topic separately, in subsection F, below.

will be eliminated by using the Zero Liquid Discharge system at the behest of the Central Valley Regional Water Quality Board. (Ex. 22, pp. 9-5 to 9-6.) Even with the absence of impact, however, a COE (contained in Part IV of this Decision) is required to enable the Commission to fulfill a statutory obligation to collect and report information. (9/2/03 RT 84-85.)

As regards the **Public Health** topic, the evidence establishes that the project will not result in significant adverse impacts. (Exs. 1, 2, 5, 13, 22, 25, 26.) Evidentiary discussions concerned only unchallenged updates in the health risk assessment. (9/2/03 RT 87-89, 94-96.) The COE for this topic is needed to assure the establishment of an adequate program to control bacterial growth from the cooling tower. (9/2/03 RT 90-91.)

E. Uncontroverted Topic Areas Requiring Mitigation

Four uncontroverted topic areas require implementation of mitigation measures.

For **Biological Resources**, incorporation of proposed mitigation measures and those prescribed by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan will assure that less than significant impacts occur. (9/2/03 RT 51-52; Exs. 1, 2, 5, 15, 22, 25.) In **Cultural Resources**, monitoring, retrieval, and/or reporting of artifacts discovered during construction are necessary to prevent impacts. (9/2/03 RT 62-65; Exs. 1, 2, 4, 5, 6, 9, 15, 22, 25.) COEs are included in Part IV of this Decision to assure implementation of mitigation measures for both these topic areas.

Staff reviewed applicable geological maps and reports for the project area, and Applicant conducted a paleontologic resources survey and a sensitivity analysis for the project and related linear facilities. The evidence establishes that the project will not adversely impact **Geologic Resources**, and Applicant's proposed mitigation and monitoring will prevent significant adverse impact to

**Paleontologic Resources.** (Exs. 1, 2, 4, 15, 22, 25.) No COEs are necessary. (Ex. 26.)

In discussing the **Hazardous Materials Management** topic, Intervenor Sarvey questioned whether MID would comply with the San Joaquin County Office of Emergency Services' concerns regarding the submission of a Business Plan under the provisions of the Health and Safety Code. (9/2/03 RT 68-69.) Applicant clarified that while the law did not require it to submit the specified Business Plan, it would in fact comply with the substance of the provisions and supply to appropriate emergency response agencies the project site plan and chemical inventory, as well as prepare an emergency response plan for the MEGS project. (9/2/03 RT 70-71; Ex. 20; Applicant's Opening Brief, p. 7 fn. 4.) No evidence of record suggests this is not sufficient. COEs regarding the transport and delivery of hazardous materials during both project construction and operation are, however, necessary to ensure no significant adverse impact results. (9/2/03 RT 67-68, 71-75; Exs. 1, 2, 5, 15, 22, 25.) We include these in Part IV, below.

F. Topics of Concern

During this proceeding, Intervenor Sarvey and members of the public voiced concern over several technical disciplines suggesting, in effect, that the project should undergo an EIR level review. After considering the comments and arguments made in light of the evidence of record as a whole, however, we have concluded that mitigation accepted by Applicant and measures required in the Conditions of Exemption will suffice to prevent significant adverse environmental impacts from occurring.

These topics of concern are briefly discussed below, as are our reasons for concluding the impacts will be adequately mitigated.

## 1. Air Quality

The MEGS project can potentially impact air quality during both the construction and the operation phases. The evidence clearly establishes that Conditions of Exemption **AQ-C1** through **AQ-C5**, as revised, will adequately mitigate any construction impacts. (See, Applicant's Opening Brief, pp. 27-28; Staff's Opening Brief, pp. 5-6 and Attachment A thereto; Applicant's letter of October 2, 2003.) The record does not contain any contradictory evidence.

The record establishes that operational air quality impacts were analyzed in three ways: pollution control technologies; air quality impacts analysis; and preparation of a health risk assessment. (9/2/03 RT 269; Exs. 1, 2, 5, 7, 13 through 18, 21, 22, 28 through 36.) Applicant performed a thorough air quality impact analysis using dispersion models required by the United States Environmental Protection Agency (USEPA) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or Air District) and a number of worst-case assumptions. (9/2/03 RT 269; Ex. 1, pp. 8.1-29 to 8.1-39.) Specifically, the analysis assumed worst-case operating scenarios, worst-case emissions, and worst-case weather conditions at the project site. (9/2/03 RT 269.) The purpose of these conservative assumptions is to make certain that the MEGS project will not cause any violations of any state or air quality standards at any location, at any time, under any weather conditions, and under any operating conditions. (9/2/03 RT 269-271.) The analysis made these combined worst-case assumptions even if the assumed conditions physically cannot occur at the same time. (9/2/03 RT 269.)

To address local air quality impacts, Applicant analyzed the appropriate pollution control technology and the "best available control technology" (BACT). (9/2/03 RT 268-269; Ex. 1, Appendix 8.1G.) BACT requires that new facilities use the

cleanest technologies available. This ensures that potential impacts on local air quality are minimized.<sup>25</sup> (9/2/03 RT 269.)

The MEGS project will use an oxidation catalyst to control carbon monoxide (CO) emissions. (Ex. 1, p. 8.1-20.) The SJVUAPCD will require that CO emissions be limited to 6.0 ppmvd @ 15% O<sub>2</sub>, averaged over three hours. This is comparable to BACT for other similar facilities. (Ex. 22, p. 3-21.)

Nitrogen oxides (NO<sub>x</sub>) will be controlled through a combination of two technologies. One is the use of water injection. The second is selective catalytic reduction (SCR), a system that the Commission has reviewed many times before and found to be feasible and effective. (9/2/03 RT 268; Ex. 1, p. 8.1-20.) Each combustion gas turbine is designed to meet a NO<sub>x</sub> emission concentration limit of 2.5 ppmvd NO<sub>x</sub> @ 15% O<sub>2</sub>, averaged over three hours during all operating modes except gas turbine start-ups and shutdowns. (Ex. 1, p. 8.1-24.) This meets the Air District's current BACT determination for NO<sub>x</sub> for simple cycle gas turbines such as those proposed for use at MEGS. (Ex. 1, Appendix 8.1G.)

Reactive organic gases (ROGs) will be controlled through the use of good combustion practices. (Ex. 1, p. 8.1-45.) The Air District will require BACT for VOC at an emission limit of 2.0 ppmvd @ 15% O<sub>2</sub>, averaged over three hours. (Ex. 1, p. 8.1-45.)

Emissions of sulfur dioxide (SO<sub>2</sub>) and particulate matter less than 10 microns (PM<sub>10</sub>) will be controlled through the use of natural gas as a fuel. MEGS will exclusively use natural gas which satisfies the BACT requirement for SO<sub>2</sub>. (Ex. 1, p. 8.1-45.) Similarly, PM<sub>10</sub> emissions will be controlled through the use of clean burning natural gas for the combustion turbines. This will result in minimal emissions and minimal formation of secondary PM<sub>10</sub>. (Ex. 1, p. 8.1-45.)

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<sup>25</sup> In this case, SJVUAPCD's Authority to Construct will confirm that the MEGS Project complies with BACT. (9/2/03 RT 268.) No substantial evidence disputes this.

Condition of Exemption **AQ-C6** specifies mitigation for operational emissions. The expert testimony of record is uniform in establishing that the emission reductions identified will adequately mitigate the project's operational impacts and ensure compliance with applicable air quality laws. (9/2/03 RT 271; Ex. 1, pp. 8.1-45 to 8.1-47; Ex. 22, pp. 3-41 to 3-43.)

Intervenor Sarvey contends, however, that ammonia emissions from the SCR control system (referred to as "ammonia slip") may be converted into harmful levels of PM<sub>2.5</sub> emissions<sup>26</sup>. In his opinion, this would create an adverse impact which can be avoided by eliminating ammonia use through adoption of the SCONO<sub>x</sub> control system, or by reducing ammonia slip to 5 ppm from the proposed 10 ppm limit. There are no current laws regulating permissible levels of PM<sub>2.5</sub> emissions. (Ex. 22, p. 3-14.)

The SCONO<sub>x</sub> control system does not create ammonia emissions. Although the lay Intervenor contends that the SCONO<sub>x</sub> technology is BACT for NO<sub>x</sub> and feasible for the MEGS project (see, e.g., Intervenor's Opening Brief, pp. 12-13 and Reply Brief, pp. 13-18), the uniform expert testimony of record indicates otherwise. For example, Staff's witness testified that SCONO<sub>x</sub> was not technically feasible for the type of turbine to be used (9/2/03 RT 357-358; Ex. 22, p. 3-50), and the Air District confirmed that it does not consider the technology feasible for this project. (9/2/03 RT 378-379, 385.) The record does not contain other than anecdotal inferences which could be construed as challenging this. We therefore conclude that the record does not contain substantial evidence establishing that the SCONO<sub>x</sub> control technology is feasible for the MEGS project.

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<sup>26</sup> Ammonia emissions can react with nitric acid from NO<sub>x</sub> emissions to form particulate matter. (Ex. 22, p. 3-12.) PM<sub>2.5</sub> is particulate matter 2.5 microns in diameter.

Finally, Intervenor Sarvey contends that an ammonia slip level of 5 ppm, rather than the anticipated 10 ppm, is feasible and should be required in order to reduce particulate matter formation. (Opening Brief, pp. 9-10; Reply Brief, pp. 10-11.)

There is no substantial evidence of record supporting this contention. The expert testimony uniformly establishes that the 10 ppm is the lowest reasonable ammonia slip limitation for the proposed simple-cycle project. (9/2/03 RT 278; Ex. 22, p. 3-49.) The uncontrolled NO<sub>x</sub> emissions for the project's small aero derivative turbines are 2 to 3 times higher than larger Frame 7 turbines with efficient dry low-NO<sub>x</sub> burners. (Ex. 22, p. 3-49.) The proposed MEGS power plant will also likely operate with many startups and shutdowns. Together, these factors make it very difficult to regulate ammonia emissions to 5 ppm while maintaining the required 2.5 ppm NO<sub>x</sub> emission limit. Furthermore, the expected substantial downtime for this power plant, operating primarily as a peaker, will mean that the overall emissions of ammonia are likely to be substantially lower than the 58.8 tons estimated, and also that other pollutant emissions are likely to be much less than the maximum levels permitted.

Moreover, Staff's evaluation of the adequacy of the proposed secondary pollutant impact mitigation included an evaluation of the entire amount of emission reduction credits being proposed for all the secondary particulate precursors (NO<sub>x</sub>, SO<sub>x</sub>, VOC, and ammonia). Particulate emissions are better controlled by limiting NO<sub>x</sub> and SO<sub>x</sub> emissions from the turbines. Staff concluded that with emission reduction credits (ERC) being required at a 1:1 or greater ratio for the proposed project's NO<sub>x</sub>, VOC, and SO<sub>2</sub> emissions, and even assuming worst-case annual operations that likely will greatly overestimate the actual annual emissions, the project will not cause significant secondary pollutant impacts. (9/2/03 RT 336; Ex. 22, p. 3-40.)

The record contains no substantial evidence contradicting this, and we therefore conclude that the 10 ppm ammonia slip limitation will not result in significant adverse environmental impacts.

## 2. Energy Resources

Under CEQA, the inefficient and unnecessary consumption of energy may constitute a significant impact<sup>27</sup>. In order to grant an exemption from the AFC licensing process, the Commission must be able to find that a proposed project will not create a significant adverse impact upon energy resources<sup>28</sup>. An impact can be considered significant if it results in: adverse effects on local and regional energy supplies and resources; a requirement for additional energy supply capacity; or the wasteful, inefficient, and unnecessary consumption of fuel or energy. (Ex. 22, p. 6-2.)

The unconverted evidence of record establishes that MID needs peaking power, and that the proposed simple-cycle configuration is the preferable means of providing this power. (9/2/03 RT 107, 122, 130-131.) The evidence also establishes that the project's fuel consumption will not adversely affect existing natural gas supplies and that additional supply capacity will not be needed. (9/2/03 RT 129.) Thus, substantial evidence establishes that the project does not have the potential to create adverse impacts based upon the first two criteria mentioned above.

The record is less clear, however, regarding the third criterion – the wasteful, inefficient, and unnecessary consumption of energy. While the proposed simple-cycle technology is appropriate for the peaking needs identified, it consumes fuel much less efficiently than does a combined-cycle project. This loss in efficiency

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<sup>27</sup> 14 Cal. Code of Regs., section 15126(a) (1); Guidelines, Appendix F.

<sup>28</sup> Section 25541.

is compensated for by its quick start and other capabilities desired for a peaking application. Conversely, the combined-cycle technology, while it uses fuel more efficiently, is most appropriate for full time or baseload use. MID's Board made a policy decision to seek to preserve the option to operate the simple-cycle MEGS project 8760 hours per year (the total number of hours in a year). (9/2/03 RT 109, 151.) The question, therefore, is whether potential operation of the simple-cycle facility at 8760 hours per year would constitute a wasteful and inefficient use of energy.

MEGS is proposed as a peaking project which will also operate in baseload mode during part of the year. (5/16/03 RT 37-38, 9/2/03 RT 16; Ex. 1, 25.) Staff analyzed the project based upon this operating profile. (9/2/03 RT 118-119; Ex. 26.) The evidence of record establishes that the project will not result in wasteful or inefficient energy use if operated solely as a peaker (Ex. 22), or when evaluated as proposed, i.e. operating as a peaker most of the year and as baseload for a limited period of the year. (Ex 26.)

The evidence is silent on the extent of the project's impacts upon energy resources if operated in baseload mode, i.e. for 8760 hours per year<sup>29</sup>. (9/2/03 RT 118-120.) Applicant apparently seeks to preserve the option to operate in this manner. In post-hearing submittals, Applicant attempted to explain why the desired flexibility to operate at 8760 hours is necessary. (Applicant's Opening Brief, pp. 8-10.) At the same time, however, both Applicant and Staff point out various reasons – many economic – that MID will not actually operate it at that level. (Applicant's Reply Brief, pp. 9-11; Staff's Opening Brief, pp. 9-12.)

It seems to us that Applicant is arguing to preserve an option which it also states it will *not* use. This creates a logical quandary, especially since some of the

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<sup>29</sup> Air Quality and Public Health impacts were evaluated based upon a worst case assumption of 8760 hours of operation. (9/2/03 RT 128.)

comparisons upon which Applicant relies in order to support a potential 8760 hour operating level are inapposite. For example, Applicant suggests that we rely upon Commission decisions on other projects such as Henrietta, Tracy, and Calpeak,<sup>30</sup> wherein operational hours were either unlimited or limited to 8000 hours per year. (Applicant's Opening Brief, pp. 7-8, 12-13.) The problem with this suggestion is that the Calpeak project reviews were performed under now defunct emergency provisions of the law,<sup>31</sup> and that the Henrietta and Tracy projects were subjected to AFC review.<sup>32</sup> The purpose of the present proceeding is to determine whether MEGS should be exempted from this level of review.

In short, we simply cannot agree that a project allowed to potentially operate for 8760 hours per year is a peaking facility. Moreover, the evidence of record is simply deficient concerning the impact on energy resources were the project in fact to operate at that level. We can conclude, however, that the project may qualify for the SPPE provided that the evidence defines an upper limit (in terms of annual hourly operation) at which the project may run without resulting in a wasteful or inefficient use of energy. We believe it does.

In this regard, the uncontroverted evidence of record establishes that, in order to meet the actual peaking and limited baseload purposes specified for the project, MEGS would need to run from 70 to 90 days as a baseload facility (from July to September),<sup>33</sup> and up to 10 hours per day the remainder of the year.<sup>34</sup> (9/2/03 RT, 124, 279-280.) This totals almost 5000 hours per year of operation for the project as proposed.

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<sup>30</sup> Docket Nos. 01-AFC-18, 01-AFC-16, 01-EP-10, and 01-EP-14, respectively.

<sup>31</sup> The provisions also required conversion of these simple cycle peakers to combined cycle. Applicant has no similar intentions. (9/2/03 RT 111.)

<sup>32</sup> Intervenor Sarvey also notices these distinctions at pp. 3-4 of his Reply Brief.

<sup>33</sup> This equals about 2200 hours (using 90 days).

<sup>34</sup> This equals 2750 hours (10 hours per day times 275 days).

Staff analyzed the project as proposed – with both the peaking and baseload levels – and concluded the project would not result in an inefficient use or wasteful of energy resources. (Exs. 22, 26.) Nothing in the record contradicts this analysis. We therefore conclude that the project will not create significant adverse impacts upon energy resources provided it operates no more than 5000 hours per year.

We have included a COE reflecting this limitation and providing for monitoring of the actual hours of operation.<sup>35</sup> We believe MID retains adequate flexibility since nothing dictates *when* the plant may be operated.

### 3. Noise

The project is located in an existing industrial area with very high noise levels. (9/2/03 RT 198-199.) Noise caused by project construction and operation will be monitored to ensure compliance with local ordinances and general plan requirements, as well as to determine whether the project will produce any excessive noise or a substantial increase in ambient noise levels. The project is designed to include noise reduction measures such as turbine air inlet silencers, combustion turbine acoustical enclosures, combustion stack silencers, and barrier walls around the fuel gas compressors. (Exs. 1, 2, 5, 15, 22.)

The nearest sensitive receptor, a residence, is located approximately 1000 feet from the center of the proposed facility. (9/2/03 RT 199.) Applicant's modeling predicts an increase of up to 10 dBA in loudness at this location as a result of project operation<sup>36</sup>. Staff concurs with this modeling. In addition, Staff performed

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<sup>35</sup> Applicant's proposed condition (Opening Brief, pp. 14-15) neither limits operation nor provides effective monitoring.

<sup>36</sup>Noise from project construction is temporary in nature and restricted to day time hours by local ordinance. (Ex. 22, pp. 11-12.) Nothing in the record suggests that construction noise would

a supplemental noise analysis at another nearby location and found that the increase in noise levels caused by plant operation would be lower than initially estimated. (9/2/03 RT 202, 240-241; Ex. 26; see also, Staff's Opening Brief, pp. 12-14.) The predicted operational noise levels are shown on Table 1, below.

**NOISE: Table 1**  
**Summary of Predicted Operational Noise Levels\***

Noise Levels, dBA					
Measurement Sites	Ambient*	Project*	Cumulative	Change	L <sub>dn</sub> , dB**
A	47	57	57	+10	63
B	50	64	64	+14	70
R	54	55	58	+ 4	

\* Staff estimate, average background noise, monitoring location A, four quietest nighttime hours.

\*\* Applicant's estimate (Ex. 1, Table 8.5-8).

Source: Ex. 26, p.3.

Location A is a residential neighborhood located to the west, about 1,050 feet from the center of the project. Location R is a second residential neighborhood slightly further from the project's center. Location B is at the eastern site boundary, about 800 feet from the center. (Exs. 22, p. 11-4; 26, pp. 2-3.) Locations A and R are sensitive receptors. (9/2/03 RT 199-200.)

Even though the noise survey establishes that the predicted noise levels from the project at locations A (57 dBA) and R (55 dBA) will be below the 65 dBA limit prescribed by City ordinance, local residents and Intervenor Sarvey remain concerned. (9/2/03 RT 200, 219-221, 223-225, 235.)

The testimony from qualified experts presented by Applicant and by Staff indicates that the MEGS will not create a distinct tonal noise, but rather a constant noise which will blend in with the existing surrounding noises. (9/2/03 RT 222-226; Ex. 22, pp. 11-10.) At designated sensitive receptors A and R, this

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constitute a significant adverse impact. (Ex. 26, pp. 3-4; see also, 9/2/03 RT 201, 232, 234, 388-309.)

could result in an increase in ambient noise level of from 4 dBA (barely perceptible) to 10 dBA (a doubling). (9/2/03 RT 234-236.) The testimony further indicates that an increase of 5 to 10 dBA will annoy some people (9/2/03 RT 244-245), and that an increase greater than 10 dBA can be considered significant. (9/2/03 RT 204-205, 207-212, 217, 241-242.)

The evidence does not, however, establish that the MEGS project will create a significant noise impact. First, the modeling methods used are inherently conservative. Although these methods possess a margin of error of about 1 dBA (9/2/03 RT 213), they typically overestimate noise levels produced by 3 to 5 dBA (9/2/03 212, 238-239; see also Intervenor's Reply Brief, p. 7.) Thus, even considering the margin of error, the resulting plant noise will likely still be below estimated levels.

Moreover, the potentially effected residential areas, especially location R<sup>37</sup>, are already typically noisy. In the opinion of the expert witnesses, increasing the combined noise in these areas by the predicted levels would not result in significant impacts. (9/2/03 RT 234-236, 238-241.) This conclusion is uncontradicted by other substantial evidence.

The record does show that members of the public are concerned with what they view as lax enforcement of noise restrictions for existing projects by the City of Ripon<sup>38</sup>. (9/2/03 RT 76-80, 259-260, 253-257.) As a new facility, however, the MEGS project will be subject to the City's Site Plan Permit Review process. (9/2/03 RT 248-249.) The City has committed to use this process to deal effectively with noise and other nuisance complaints associated with the MEGS project. (Applicant's Opening Brief, Attachment C.)

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<sup>37</sup> Noise at this location is greater at night. (9/2/03 RT 257-258.)

<sup>38</sup> Ripon's noise element does not apply to existing sources.

Finally, due to public concern, and to ensure that MEGS does not create significant impacts, we have included two noise Conditions of Exemption which adequately address these matters. Condition **Noise-1** will limit power plant operational noise levels to 57 dBA at Location A, and to 55 dBA at location R. This will assist in addressing any modeling uncertainties by specifying maximum acceptable noise levels. If these standards are exceeded, the Commission's Compliance Project Manager (CPM) can require additional necessary mitigation. Condition **Noise-2** will provide an additional mechanism to resolve noise complaints by retaining Commission oversight in this area. (Staff Opening Brief, pp. 14-15.) This will ensure sufficient monitoring of the project's noise levels.

With these Conditions, we conclude the MEGS project will not result in significant noise impacts.

#### 4. Visual Resources

The project site is a flat, open parcel located adjacent to existing industrial facilities at the southern edge of the City of Ripon. It is currently vacant, and does not possess significant visual features. The closest residence with an unobstructed view of the site is located over one-quarter mile to the west. (9/2/03 RT 163.)

Both Applicant's and Staff's expert witnesses analyzed the project's visual impacts based upon Appendix G of the CEQA Guidelines. (9/2/03 RT 164-167; Ex. 22, pp. 17-1 to 17-2.) These experts concluded that, with the implementation of mitigation measures such as neutral color treatment, shielded lighting, and landscaping, no significant impacts would occur. (9/2/03 RT 167-168, 178-195; Exs. 1, 2, 5, 10, 13, 15, 22, 25, 27.) Further, Applicant will make a "special point" of planting a row of fast growing trees along the western edge of the site to screen it from view. (9/2/03 RT 168: 14-16.)

Development of other projects will likely occur in the industrially zoned vicinity of the project. (9/2/03 169-75.) In the opinion of Staff's expert witness, the MEGS project, without mitigation and in combination with these other projects, would cause substantial cumulative visual impacts by blocking views (from the west) of existing redwood trees. (9/2/03 RT 181.) While Applicant's expert does not agree that the cumulative impact would be significant (9/2/03 RT 175-176, 178), Applicant has agreed to plant fast growing evergreens on the west side of the MEGS boundary. After about five years of growth, this will "sandwich" MEGS between the existing trees and the newly planted ones. In Staff's view, this measure is sufficient to mitigate for blocking the view of the existing trees. (9/2/03 RT 184-186.) Thus, the evidence indicates that the cumulative impacts will be reduced to a less than significant level. (Ex. 27, p.1.) No substantial evidence of record supports a contrary conclusion.

The City of Ripon has agreed to enforce this mitigation, as well as the other elements of the landscaping plan, through its Major Site Plan Permit Review process. (9/2/03 RT 187-188, 190-191; Applicant's Opening Brief, pp. 16-17; Staff's Opening Brief, pp. 17-18.) Staff understands that the City will meet the performance goals to be achieved by screening the power plant, and did not suggest that a Condition of Exemption was necessary in the Final Initial Study.<sup>39</sup> (9/2/03 RT 182-183, 194-195.)

Intervenor Sarvey argues that Commission oversight of visual mitigation is warranted. (Intervenor's Opening Brief, pp. 4-5; Reply Brief, pp. 8-9.) We agree. The difference of opinion between Staff's and Applicant's experts concerning the existence of the cumulative visual impact could itself propel the need for an EIR level of review. This difference is rendered moot by implementation of the mitigation measures. Since we have decided to exempt the project from our EIR equivalent process, we believe we have the responsibility to retain a level of

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<sup>39</sup>The Draft Initial Study contained two proposed conditions regarding visual resources.

oversight to ensure that measures necessary to mitigate specifically identified potential significant impacts are implemented. We have therefore included **VIS-1** as a Condition of Exemption<sup>40</sup>.

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<sup>40</sup> Part IV, *infra*. This condition is essentially that which appeared as **VIS-2** in the Draft Initial Study.

### III. ENGINEERING TOPIC AREAS

CEQA's requirements for a Mitigated Negative Declaration focus on potential impacts to the natural environment. The Commission, however, also performs an assessment of relevant engineering disciplines. In the present case, these disciplines involve electrical transmission issues insofar as determining whether the tie line from the project may expose the public to potential hazards (including electromagnetic fields), as well as the effects the project's generation may have upon the grid.

In the former instance, the evidence uniformly establishes that the line will be designed according to existing MID criteria, and that Applicant's proposed measures will assure the line does not create radio frequency interference or aviation, shock, fire, or electromagnetic field hazards. (9/2/03 RT 59-60; Exs. 1, 5, 11, 12, 15, 22, 25, 26.) Uncontested evidence on the topic of **Transmission System Engineering** indicates that Applicant performed, and Staff reviewed, various studies addressing the project's impacts. (9/2/03 RT 96-98; Exs. 1, 5, 11, 12, 15, 22, 25.) The evidence establishes that the addition of MEGS will significantly improve the reliability of the MID system, improve the voltage profile, and provide additional reactive power. (Ex. 22, p. 16-7.) While there will also be marginal adverse incremental impacts in the grids controlled by the Western Area Power Administration and California Independent System Operator, these will be adequately mitigated by congestion management, Special Protection Schemes, or operational procedures. (Ex. 22, pp. 16-1.)

## IV. FINAL CONDITIONS OF EXEMPTION

Following are the final Conditions of Exemption applicable to the MEGS project. The versions below contain the appropriate amendments discussed at the evidentiary hearing and subsequent submittals, as well as incorporate any changes by the Commission. They supercede all other versions, including those in the Final Initial Study (Appendix A), as amended (Appendix B).

### A. AIR QUALITY

#### General Conditions

**AQ-G1.** The project owner shall provide the CPM copies of all Authority-to-Construct (ATC) and Permit-to-Operate (PTO) air quality permits received from the District.

**Verification:** The project owner shall submit copies of the ATCs and PTOs to the CEC CPM upon receipt of those permits from the SJVAPCD.

#### Construction and Pre-Construction Conditions

**AQ-C1.** The project owner shall fund all expenses for an on-site air quality construction mitigation manager (AQCMM) who shall be responsible for maintaining compliance with conditions **AQ-C1** through **AQ-C5** for the entire project site and linear facility construction. The on-site AQCMM may delegate responsibilities identified in Conditions **AQ-C1** through **AQ-C5** to one or more air quality construction mitigation monitors. The on-site AQCMM shall have full access to areas of construction of the project site and linear facilities, and shall have the authority to appeal to the CPM to have the CPM stop any or all construction activities as warranted by applicable construction mitigation conditions. The on-site AQCMM, and any air quality construction mitigation monitors responsible for compliance with the requirements of **AQ-C4**, shall have a current certification by the California Air Resources Board for Visible Emission Evaluation prior to the commencement of ground disturbance. The AQCMM may have responsibilities in addition to those described in this condition. The on-site AQCMM shall not be terminated without written consent of the CPM.

**Verification:** At least 60 days prior to the start of ground disturbance, the project owner shall submit to the CPM, for approval, the name, current ARB Visible Emission Evaluation certificate, and contact information for the on-site AQCMM and air quality construction mitigation monitors.

**AQ-C2.** The project owner shall provide a construction mitigation plan (CMP), for approval, which shows the steps that will be taken, and reporting requirements, to ensure compliance with conditions **AQ-C3** through **AQ-C5**.

**Verification:** At least 60 days prior to start any ground disturbance, the project owner shall submit to the CPM, for approval, the construction mitigation plan. The CPM will notify the project owner of any necessary modifications to the plan within 30 days from the date of receipt. Otherwise, the plan shall be deemed approved.

**AQ-C3** The on-site AQCMM shall submit to the CPM, in a monthly report, a construction mitigation report that demonstrates compliance with the following mitigation measures:

- a) All unpaved roads and disturbed areas in the project and linear construction sites shall be watered until sufficiently wet. The AQCMM shall direct additional watering when visual dust plumes are observed. The frequency of watering can be reduced or eliminated during periods of precipitation.
- b) No vehicle shall exceed 15 miles per hour within the construction site.
- c) The construction site entrances shall be posted with visible speed limit signs.
- d) All construction equipment vehicle tires shall be washed or cleaned free of dirt prior to entering paved roadways.
- e) Gravel ramps of at least 20 feet in length must be provided at the tire washing/cleaning station.
- f) All entrances to the construction site shall be graveled or treated with water or dust soil stabilization compounds.
- g) No construction vehicles can enter the construction site unless through the treated entrance roadways.
- h) Construction areas adjacent to any paved roadway shall be provided with sandbags to prevent run-off to the roadway.
- i) All paved roads within the construction site shall be swept twice daily when construction activity occurs.

- j) At least the first 500 feet of any public roadway exiting from the construction site shall be swept twice daily on days when construction activity occurs, and twice daily on any other day when dirt or runoff from the construction site is visible on the public roadways.
- k) All soil storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or be treated with appropriate dust suppressant compounds.
- l) All vehicles that are used to transport solid bulk material on public roadways and that have potential to cause visible emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded onto the trucks in a manner to provide at least one foot of freeboard.
- m) Wind erosion control techniques such as windbreaks, water, chemical dust suppressants, and vegetation shall be used on all construction areas that may be disturbed. Any windbreaks used shall remain in place until the soil is stabilized or permanently covered with vegetation.
- n) Any construction activities that may cause fugitive dust in excess of the visible emission limits specified in Condition **AQ-C4** shall cease when the wind exceeds 25 miles per hour unless water, chemical dust suppressants, or other measures have been applied to reduce dust to the limits set forth in **AQ-C4**.
- o) Diesel Fired Engines
  - 1) All diesel-fueled engines used in the construction of the facility shall be fueled only with ultra-low sulfur diesel, which contains no more than 15 ppm sulfur.
  - 2) All diesel-fueled engines used in the construction of the facility shall have clearly visible tags issued by the on-site AQCM that show the engine meets the conditions set forth herein.
  - 3) All large construction diesel engines, which have a rating of 50 hp or more, shall meet, at a minimum, the Tier 1 ARB/EPA certified standards for off-road equipment unless certified by the on-site AQCM that a certified engine is not available for a particular item of equipment. In the event a Tier 1 ARB/EPA certified engine is not available for any off-road engine larger than 50 hp, that engine shall be equipped with a catalyzed diesel particulate filter (soot filter), unless certified by engine

manufacturers or the on-site AQCOMM that the use of such soot filters is not practical for specific engine types. For the purposes of this condition, a Tier 1 diesel engine is “not available” or the use of such soot filters is “not practical” if the AQCOMM in applying recognized industry practice certifies that:

- The Tier 1 diesel engine is not available. For purposes of this condition, “not available” means that a Tier 1 diesel engine certified by either CARB or EPA is: (i) not in existence at any location for use by the project owner at or near the time project construction commences; (ii) in existence but the construction equipment is intended to be on-site for ten (10) days or less; or (iii) not available for a particular piece of equipment.
- Despite the project owner’s best efforts, use of the soot filter is not practical. For the purposes of this condition, “not practical” means any of the following: (i) the use of the soot filter is excessively reducing normal availability of the construction equipment due to increased downtime for maintenance and/or reduced power output due to an excessive increase in backpressure; (ii) the soot filter is causing or is reasonably expected to cause significant engine damage; (iii) the soot filter is causing or is reasonably expected to cause a significant risk to workers or the public; (iv) the construction equipment is intended to be on-site for ten (10) days or less; or (v) other good cause approved by the CPM.

Any conflict between mitigation measures (a) through (n) and District Rules 8021 through 8081 will be identified in the CMP. In the event such a conflict precludes compliance with both the CEC and District requirements, not including District exemption and applicability thresholds which reduce or eliminate fugitive dust control requirements, the provisions of District rules shall govern.

**Verification:** In the MCR, the project owner shall provide the CPM a copy of the construction mitigation report and all diesel fuel purchase records, including quantity purchased, which clearly demonstrates compliance with condition **AQ-C3**.

**AQ-C4** No construction activities are allowed to cause visible dust emissions at or beyond the project site fenced property boundary or the boundary of any adjacent property owned by the project owner. No construction activities are allowed to cause visible dust plumes that exceed 20 percent opacity at any location on the construction site. No construction activities are allowed to cause any visible dust plume in excess of 200 feet beyond the centerline of the construction of linear facilities, or cause visible dust plumes to occur within 100 feet upwind of any occupied structures that are not under the control of the project owner.

**Verification:** The on-site AQCMM shall conduct a visible emission evaluation at the property boundary, or 200 feet from the center of construction activities at the linear facility, or adjacent to occupied structures, each time the AQCMM sees excessive fugitive dust from the construction or linear facility site. The records of the visible emission evaluations shall be maintained at the construction site and shall be provided to the CPM in a monthly report.

**AQ-C5** During site mobilization, ground disturbance, and grading activities, the project owner shall limit the fugitive dust causing activities (i.e. scraping, grading, trenching, or other earth moving activities) to a twelve-hour per day schedule. Short excursions to this twelve-hour per day limit may be allowed, with CPM approval, if the site conditions and construction activities are such that this will not cause significant construction dust impacts.

**Verification:** The project owner shall provide records of compliance as part of a monthly report.

**AQ-C6** The project owner shall provide emission reduction credits to offset the project's VOC, PM<sub>10</sub>, and SO<sub>2</sub> emissions. The quantity of emissions to be offset are 22,137 lbs of VOC, 53,460 lbs of PM<sub>10</sub>, and 8,760 lbs of SO<sub>2</sub>. The following VOC ERC Certificates shall be used in whole or part to offset the VOC emissions at a 1:1 ratio; C-539-1, C-552-1, C-554-1, C-553-1, C-1963-1, and N-389-1. The following SO<sub>2</sub> ERC Certificates shall be used in whole or part to offset the PM<sub>10</sub> and SO<sub>2</sub> emissions: C-531-5, N-374-5, and S-1964-5. The SO<sub>2</sub> emissions will be offset at a 1:1 ratio. The PM<sub>10</sub> emissions shall be offset using the SO<sub>2</sub>:PM<sub>10</sub> interpollutant offset ratio of 1.2:1, which has been determined by the SJVAPCD to be appropriate for this project. The project owner shall provide additional PM<sub>10</sub> and/or SO<sub>2</sub> ERCs in order to provide a 1:1 offset of the project's PM<sub>10</sub> emissions, incorporating the 1.2:1 SO<sub>2</sub> for PM<sub>10</sub> interpollutant offset ratio, and SO<sub>2</sub> emissions. The quantity of additional ERCs required is 7,693 lbs of PM<sub>10</sub> ERCs, or 9,231 lbs of SO<sub>2</sub> ERCs, or a combination of PM<sub>10</sub> and SO<sub>2</sub> ERCs that equals 7,693 lbs after applying the interpollutant offset ratio of 1.2:1 to any SO<sub>2</sub> ERCs being

proposed. The project owner shall obtain these additional ERCs at a minimum in the form of a binding option agreement.

The ERCs can be adjusted from one calendar quarter to another calendar quarter in accordance with SJVAPCD regulations in order to achieve a 1:1 offset ratio proposal for each calendar quarter.

Revisions to the offsetting proposal, and the specific ERCs used to offset the project, are allowed as long as these revisions will not reduce the VOC, PM<sub>10</sub>, or SO<sub>2</sub> emission offsets below a 1:1 offset ratio of allowable annual project emission levels. Revisions to the offsetting proposal shall be provided to the CPM for review and approval prior to ERC surrender.

**Verification:** At least 60 days prior to commencing turbine first fire, the project owner shall surrender the identified ERC certificates and in the amounts shown in **AQ-C6** to the District and provide documentation of that surrender to the CPM. The project owner shall provide documentation of the necessary additional ERCs to the CPM within 90 days of the project approval and no later than the beginning of construction.

## **B. BIOLOGICAL RESOURCES**

**BIO-1** The project owner must provide written verification to the CPM that the project is in compliance with the SJMSCP prior to the start of any project-related construction activities.

**Verification:** No fewer than 60 days prior to any project-related site mobilization activities, the project owner must provide written verification to the CPM that the project has provided the required habitat compensation for the MEGS project to the San Joaquin Council of Governments, including a description of how the habitat compensation funds will be utilized.

## **C. CULTURAL RESOURCES**

**CUL-1** The project owner shall employ a Cultural Resources Specialist to monitor the project. Additional monitors or technical specialists shall be retained as necessary by the CRS.

- The project owner shall provide a copy of all cultural resource documents previously generated for this project to the City of Ripon and to the CRS.
- The project owner shall ensure that the CRS conducts a reconnaissance survey of the project site and linear foot print. After the survey has been conducted, monitoring activities shall be conducted at the discretion of the CRS.

- The CRS shall develop a cultural resources training plan and provide cultural resources training to all new employees during project ground disturbance. The project owner shall ensure that employees receive cultural resources training prior to beginning project related tasks. The training shall focus on recognition of archaeological materials and reporting requirements if archaeological materials are discovered. The training may be presented in a video.
- The project owner shall provide a letter to the CRS, with a copy to the City of Ripon. The letter shall grant authority to the CRS and archaeological monitors to halt construction if there is a discovery of archaeological materials.
- Data recovery or collection of materials shall be conducted based on criteria generated in the research design (required by **Cul-2**). If the CRS determines that human remains have been discovered, the county coroner shall be contacted pursuant to state law.
- A Native American monitor shall be obtained to monitor ground disturbance in areas where Native American artifacts may be discovered. Informational lists of concerned Native Americans and Guidelines for monitoring shall be obtained from the Native American Heritage Commission. Preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that is monitored.
- Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS, or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these Conditions of Exemption.
- The CRS and the project owner shall notify the City of Ripon by telephone or e-mail of any incidents of non-compliance with the Conditions of Exemption, permit conditions and/or applicable LORS upon becoming aware of the situation. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the Conditions of Exemption.
- During the ground disturbance phases of the project, the project owner shall provide copies of the weekly summary reports of monitoring logs prepared by the CRS to the City of Ripon.

**Verification:** Prior to beginning the reconnaissance survey, the project owner shall provide the City of Ripon and the CRS with a copy of all cultural resources documents previously generated for this project. In addition, the project owner shall provide the City of Ripon with copies of the weekly summary reports of monitoring logs in a monthly report or in a manner acceptable to the City of Ripon.

**CUL-2** Prior to the start of ground disturbance, the project owner shall ensure that the CRS prepares a Cultural Resources Monitoring and Mitigation Plan (CRMMP). The CRMMP shall identify general and specific measures to minimize potential impacts to sensitive cultural resources. Copies of the CRMMP shall reside with the project owner, CRS, each monitor, and the City of Ripon.

The CRMMP shall include, but not be limited to, the following elements and measures:

1. A general research design that includes a discussion of research questions and testable hypotheses applicable to the project area. A refined research design shall be prepared for any resource where data recovery is required. The research design shall contain lists of artifact and other cultural materials that are collected because they contribute information to the research questions.
2. A discussion of a preliminary reconnaissance survey of the project footprint conducted by the CRS. If avoidance measures are determined to be necessary by the CRS, a discussion of all avoidance measures (such as flagging or fencing) to prohibit or otherwise restrict access to sensitive resource areas that are to be avoided during construction and/or operation, and identification of areas where these measures are to be implemented. The discussion shall address how these measures will be implemented prior to the start of construction and how long they will be needed to protect the resources from project-related effects.
3. A discussion of the requirement that all cultural resources encountered shall be recorded on a DPR form 523 and mapped (may include photos). In addition, all archaeological materials collected as a result of the archaeological investigations (survey, testing, and data recovery) shall be curated, in accordance with The State Historical Resources Commission's "Guidelines for the Curation of Archaeological Collections," into a retrievable storage collection in a public repository or museum. The public repository or museum must meet the standards and requirements for the curation of cultural resources set forth at Title 36 of the Federal Code of Regulations, Part 79.
4. A discussion of any requirements, specifications, or funding needed for curation of the materials to be delivered for curation and how requirements, specifications and funding will be met. This shall include information indicating that the project owner will pay all curation fees unless a different agreement to pay curation fees is reached with the City of Ripon and state that any agreements

concerning curation will be retained and available for audit for the life of the project.

**Verification:** At least 10 days prior to ground disturbance, the project owner shall provide the CRMMP to the City of Ripon for review and approval. The project owner shall also provide a letter that states that the project owner will pay all curation fees, unless a different agreement to pay curation fees is reached with the City of Ripon.

**CUL-3** Whether or not there are discoveries, the project owner shall require that the CRS prepare a Cultural Resources Report (CRR) in Archaeological Resource Management Report format (ARMR). The CRR shall report on all field activities including dates, times and locations, findings, samplings and analysis. All survey reports, Department of Parks and Recreation (DPR) 523 forms, and additional research reports shall be submitted to the City of Ripon, the California Energy Commission, the California Historic Resource Information System (CHRIS), and the State Historic Preservation Officer (SHPO).

**Verification:** The project owner shall submit the subject CRR within 90 days after completion of ground disturbance (including landscaping). Within 10 days after City of Ripon approval, the project owner shall provide documentation to the City of Ripon that copies of the CRR have been provided to the Energy Commission, SHPO, the CHRIS, and the curating institution (if archaeological materials were collected).

#### **D. ENERGY RESOURCES**

**ENERGY RESOURCES-1** The project shall not operate for more than 5000 hours per year. Following the first full year of operation, and each subsequent year thereafter, the project owner shall provide a summary of the project's operating hours for the previous year.

**Verification:** The project owner shall include the operations summary in each Annual Compliance Report.

#### **E. HAZARDOUS MATERIALS MANAGEMENT**

**HAZ-1** The project owner shall direct all vendors delivering aqueous ammonia to the site to use only tanker truck transport vehicles which meet or exceed the specifications of DOT Code MC-307.

**Verification:** At least 30 days prior to receipt of aqueous ammonia onsite, the project owner shall submit copies of the notification letter to supply vendors indicating the transport vehicle specifications to the CPM for review and approval.

**HAZ-2** The project owner shall not use any hazardous material in reportable quantities, as specified in Title 40, Code of Federal Regulations, section 355.50, not listed in Table 8.12-2 of supplement "A" to the SPPE ZLD (Exhibit 2) amendment to the SPPE application (Exhibit 1), unless approved in advance by the CPM.

**Verification:** The project owner shall provide to the CPM, in the Annual Compliance Report, a list of hazardous materials contained at the facility in reportable quantities.

**HAZ-3** The project owner shall develop and implement a Safety Management Plan for delivery of aqueous ammonia and submit the plan to the CPM for review and approval. The plan shall include procedures, protective equipment requirements, training, and a checklist. It shall also include a section describing all measures to be implemented to prevent mixing of aqueous ammonia with incompatible hazardous materials.

**Verification:** At least 60 days prior to the delivery of aqueous ammonia to be used at the facility, the project owner shall provide a safety management plan as described above to the CPM for review and approval.

## **F. HYDROLOGY AND WATER QUALITY**

**WATER-1** The project owner shall install metering devices and record on a monthly basis the amount, source, and quality of water used by the project. Quality reports shall be submitted as they become available from the City of Ripon.

The report on the monthly water use shall include the monthly range and monthly average of daily usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet.

Following the first full year of operation and in subsequent years, the annual summary shall also include the yearly range and yearly average water use by the project.

The project owner shall notify the CPM in writing of any significant changes in the water supply for the project during construction or operation of the plant.

**Verification:** The project owner shall include water summary reports in the Annual Compliance Report for the life of the project. The CPM shall be notified at least 60 days prior to the effective date of any proposed changes to the water supply.

## G. NOISE

**NOISE-1** The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that noise due to operation of the project will not exceed 57 dBA when measured at residential receivers at noise monitoring location A or 55 dBA when measured at residential receivers at noise monitoring location R, and that the noise due to plant operations will comply with the noise standards of the City of Ripon Noise Element.

No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints. The production of pure tones during normal plant operation is not allowed.

Within 30 days of the project first achieving a sustained output of 80 percent or greater of rated capacity, the project owner shall conduct a 25-hour community noise survey at monitoring locations A and R. The measurement of power plant noise for purposes of demonstrating compliance with this Condition of Exemption may alternatively be made at a location, acceptable to the CPM and City of Ripon, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the nearest residence. However, notwithstanding the use of this alternative method for determining the noise level, the character of the plant noise shall be evaluated at the nearest residence to determine the presence of pure tones or other dominant sources of plant noise. The survey during power plant operations shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been introduced. The survey during power plant operations shall also include measurement of one-third octave band sound pressure levels to ensure that no new pure-tone noise components have been introduced.

If the results from the noise survey indicate that the noise produced by the project exceeds 57 dBA at location A or 55 dBA at location R for any given 4-hour period during the 25-hour period, or that the noise standards of the City of Ripon Noise Element have been exceeded, mitigation measures shall be implemented to reduce noise to a level of compliance with these limits. If any pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

**Verification:** Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the City of Ripon Planning Department and to the CPM. Included in the report shall be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limits and a schedule, subject to CPM approval, for implementing

these measures. Within 15 days of completion of installation of these measures, the project owner shall submit to the CPM a summary report of a new noise survey, performed as described above and showing compliance with this condition.

**NOISE-2** Throughout the construction and operation of the project the project owner shall document, investigate, evaluate, and attempt to resolve all project-related noise complaints. The project owner or authorized agent shall:

The project owner or authorized agent shall:

- Use the Noise Complaint Resolution Form (attached), or functionally equivalent procedure acceptable to the City of Ripon, to document and respond to each noise complaint;
- Attempt to contact the person(s) making the noise complaint within 24 hours;
- Conduct an investigation to determine the source of noise related to the complaint;
- If the noise is project related, take all feasible measures to reduce the noise at its source; and
- Submit a report documenting the complaint and the actions taken. The report shall include: a complaint summary, including final results of noise reduction efforts; and if obtainable, a signed statement by the complainant stating that the noise problem is resolved to the complainant's satisfaction.

**Verification:** Within 30 days of receiving a noise complaint, the project owner shall file a copy of the Noise Complaint Resolution Form, or similar instrument approved by the CPM, and any reports with the City of Ripon Planning Department, and with the CPM documenting the resolution of the complaint. If mitigation is required to resolve a complaint, and the complaint is not resolved within a 30-day period, the project owner shall submit an updated Noise Complaint Resolution Form and report when the mitigation is finally implemented.

**ATTACHMENT -1 NOISE COMPLAINT RESOLUTION FORM**

Modesto Irrigation District Electric Generation Station, Ripon  
(03-SPPE-1)

**NOISE COMPLAINT LOG NUMBER** \_\_\_\_\_

Complainant's name and address:

Phone number: \_\_\_\_\_

Date complaint received: \_\_\_\_\_

Time complaint received: \_\_\_\_\_

Nature of noise complaint:

Definition of problem after investigation by plant personnel:

Date complainant first contacted: \_\_\_\_\_

Initial noise levels at 3 feet from noise source \_\_\_\_\_ dBA Date: \_\_\_\_\_

Initial noise levels at complainant's property: \_\_\_\_\_ dBA Date: \_\_\_\_\_

Final noise levels at 3 feet from noise source: \_\_\_\_\_ dBA Date: \_\_\_\_\_

Final noise levels at complainant's property: \_\_\_\_\_ dBA Date: \_\_\_\_\_

Description of corrective measures taken:

Complainant's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approximate installed cost of corrective measures: \$ \_\_\_\_\_

Date installation completed: \_\_\_\_\_

Date first letter sent to complainant: \_\_\_\_\_ (copy attached)

Date final letter sent to complainant: \_\_\_\_\_ (copy attached)

This information is certified to be correct:

Plant Manager's Signature: \_\_\_\_\_

(Attach additional pages and supporting documentation, as required).

## H. PUBLIC HEALTH

**Public Health-1:** The project owner shall develop and implement a cooling tower Biocide Use, Biofilm Prevention, and Legionella Control Program to ensure that cooling tower bacterial growth is controlled. The Program shall be consistent with CEC's guidelines or the Cooling Tower Institute's guidelines for control of Legionella.

**Verification:** At least 30 days prior to the commencement of cooling tower operations, the project owner shall submit the Biocide Use, Biofilm Prevention, and Legionella Control Program to the CPM for review and approval.

## I. VISUAL RESOURCES

**VIS-1** The project owner shall provide landscaping along the western site boundary that is effective in screening the MEGS project from the KOP 1 viewing area. Fast-growing, tall evergreen trees shall be planted at sufficient density to provide maximum effective screening of the project structures (not the upper portions of the exhaust and brine concentrator stacks) within the shortest feasible time after the start of commercial operation. Landscaping shall be provided in compliance with the City of Ripon ordinances.

The project owner shall submit to the City of Ripon for review and approval a landscaping plan whose proper implementation will satisfy these requirements. A copy of the plan shall be submitted to the CPM for review and comment. The plan shall include:

- a) A detailed landscape, grading, and irrigation plan, at a reasonable scale, prepared by a licensed landscape architect. The plan shall demonstrate how the screening requirements stated above shall be met. The plan shall provide a detailed installation schedule demonstrating installation of as much of the landscaping as early in the construction process as is feasible in coordination with project construction;
- b) A list, prepared by a qualified professional arborist familiar with local growing conditions, of proposed species, specifying installation sizes, growth rate, the expected time to maturity, the expected size at five years and at maturity, spacing, number, availability, and a discussion of the suitability of the plants for the site conditions and mitigation objectives;
- c) Maintenance procedures, including any needed irrigation and a plan for routine annual or semi-annual debris removal for the life of the project;

- d) A procedure for monitoring for and replacement of unsuccessful plantings for the life of the project; and
- e) An 11" x 17" color photo simulations of the proposed landscaping at five years and twenty years after planting, as viewed from KOP 1.

The project owner shall not implement the plan until the project owner receives approval of the submittal from the City of Ripon. The plantings must occur during the 1<sup>st</sup> optimal planting season and must be completed prior to the start of commercial operations unless otherwise authorized by the City of Ripon.

The project owner shall report landscape maintenance activities, including replacement of dead or dying vegetation, for the previous year of operation in each Annual Report to the City of Ripon and the CPM.

**Verification:** Prior to commercial operation and at least 90 days prior to installing the landscaping, the project owner shall submit the landscaping plan to the CPM for review and comment and to the City of Ripon for review and approval.

If the CMP determines that the plan requires revision, the project owner shall provide to the CPM a plan with the specified revision(s) within 30 days.

The project owner shall notify the CPM prior to commercial operation, and within seven days after completing installation of the landscaping, that the landscaping is ready for inspection.

## V. COMPLIANCE MONITORING AND GENERAL CONDITIONS OF EXEMPTION

CEQA requires the Commission to employ a reporting or monitoring program in order to ensure that measures and conditions designed to mitigate or prevent significant adverse environmental effects are implemented and enforced.<sup>41</sup> In addition to the foregoing specific Conditions of Exemptions, the following “General Conditions of Exemption” apply to the MEGS project and provide the required compliance monitoring mechanism.

Under these general conditions, MID is required to regularly report on various matters during the construction period, as well as on an ongoing basis in other instances. On-site monitors and the periodic reports will assist in assuring compliance with all conditions. (9/2/03 RT 33-35, 75-76; Exs. 22, 25.)

Since we are exempting the MEGS project from our licensing procedures, other public authorities, such as the Air District and the City of Ripon, will have the primary responsibility for regulating the project. (9/2/03 RT 36-37.) The Commission, however, will exercise oversight on aspects of the project through the various specific Conditions of Exemption discussed in this Decision. We have done this to ensure MEGS does not create any significant environmental impacts, and will enforce both the general and the specific conditions. (9/2/03 RT 36-39, 43-47.)

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<sup>41</sup> Section 21081.6.

# GENERAL CONDITIONS OF EXEMPTION

## INTRODUCTION

The MID Electric Generation Station (MEGS) Project Compliance Plan will be developed to help track Conditions of Exemption. The plan provides a means for assuring that the facility is constructed and operated in compliance with air and water quality, public health and safety, other applicable laws, ordinances, regulations and standards, and Conditions of Exemption.

The Compliance Plan is divided into two sections:

5. Compliance general Conditions of Exemption which specify the framework for record keeping and reporting throughout the construction and operation phases of the project; and,
2. Conditions of Exemption which contain measures that must be taken to mitigate any and all potential adverse project impacts to an insignificant level.

The Conditions of Exemption detailed in the technical subject area analysis includes a verification statement describing the means by which compliance with the condition can be verified. The verification procedures may be modified by the Commission Compliance Project Manager (CPM) as necessary to ensure compliance with the adopted Conditions of Exemption. Verification of compliance with the Conditions of Exemption will be accomplished by periodic reports filed by MEGS as required by the general Conditions of Exemptions.

## DEFINITIONS

To ensure consistency, continuity and efficiency, the following terms, as defined, apply to all technical areas, including Conditions of Exemption:

### **Site Mobilization:**

Site mobilization occurs when moving trailers and related equipment onto the site, usually accompanied by minor ground disturbance, grading for the trailers and limited vehicle parking, trenching for utilities, installing utilities, grading for an access corridor, and other related activities. Ground disturbance, grading, etc. for site mobilization are limited to the portion of the site necessary for placing the trailers and providing access and parking for the occupants. Site mobilization is for temporary facilities and is therefore not considered construction.

### **Ground Disturbance:**

Ground disturbance occurs when onsite activity results in the removal of soil or vegetation, boring, trenching, or alteration of the site surface. This does not

include driving or parking a passenger vehicle, pickup truck, or other light vehicle, or walking on the site.

**Grading:**

Grading occurs when onsite activity conducted with earth-moving equipment results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

**Construction:**

[From section 25105 of the Warren-Alquist Act.] Onsite work to install permanent equipment or structures for any facility. Construction does **not** include the following:

1. The installation of environmental monitoring equipment.
2. A soil or geological investigation.
3. A topographical survey.
4. Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility.
5. Any work to provide access to the site for any of the purposes specified in a., b., c., or d.

**COMPLIANCE PROJECT MANAGER**

A Compliance Project Manager (CPM) will be designated to oversee compliance with Conditions of Exemption. The assigned CPM, after consultation with the appropriate technical staff, and approval of Commission management and responsible agencies, shall:

1. Ensure that compliance files are established and maintained for the MEGS project;
2. Track compliance filings;
3. Ensure the timely processing of proposed changes to the Commission Decision;
4. Use all available means to encourage the resolution of disputes; and,
5. Coordinate compliance monitoring activities of Commission and delegate agency staff as specified in the Conditions of Exemption.

**PROJECT OWNER RESPONSIBILITY**

It shall be the responsibility of the project's owner and operator, Modesto Irrigation District, to comply with and ensure that the compliance general conditions and all Conditions of Exemption are satisfied. Failure to comply with any of the Conditions of Exemption or the compliance general conditions may

result in reopening of the case and revocation of the SPPE, or other action as appropriate.

MID shall send verification submittals to the CPM, whether such condition was satisfied or work performed by MID or other agent, and whether or not such verification was also submitted to the CPM by an agent.

### **COMPLIANCE RECORD**

MEGS shall maintain, for the life of the project, files of all Conditions of Exemption correspondence and final as-built drawings.

The Commission shall maintain as a public record:

1. All documents received regarding compliance with the Conditions of Exemption;
2. All complaints filed with the Commission; and,
3. All petitions for changes to Conditions of Exemption and documentation of the resulting staff or Commission action taken.

### **COMPLIANCE SUBMITTALS**

All compliance submittals and correspondence pertaining to compliance matters shall include a cover letter with a description of the submittal and a reference to the compliance general condition and/or the Condition of Exemption number(s) which the submittal is intended to satisfy. All submittals shall be addressed as follows:

**Compliance Project Manager  
California Energy Commission  
1516 Ninth Street (MS-2000)  
Sacramento, CA 95814**

### **CONSTRUCTION MONTHLY REPORTS**

The project owner must submit construction monthly reports to the CPM and City of Ripon as designated to assist in tracking activities and monitoring compliance with the terms and conditions of the Commission Decision. During construction, the project owner or authorized agent will submit monthly reports for air quality, hazardous material, paleontology, transportation, and water.

### **Tasks Prior to Start of Construction**

Construction shall not commence until all pre-construction Conditions of Exemption have been complied with. Project owners frequently anticipate starting project construction as soon as the project is exempted. In some cases

it may be necessary for the project owner to file submittals prior to exemption if the required lead-time for a required compliance event extends beyond the date anticipated for start of construction. It is also important that the project owner understand that pre-construction activities that are initiated prior to exemption are performed at the owner's own risk.

Various lead times for verification submittals to the CPM for Conditions of Exemption are established to allow sufficient staff time to review and comment and, if necessary, allow the project owner to revise the submittal in a timely manner. This will ensure that project construction may proceed according to schedule.

The first construction monthly report is due the month following the Energy Commission business meeting date on which the project was approved, unless otherwise agreed to by the CPM.

During pre-construction and construction of the project, the project owner or authorized agent shall submit an original and three copies of the monthly report within 10 working days after the end of each reporting month. Monthly reports shall be clearly identified for the month being reported. The reports shall contain at a minimum:

1. a transmittal letter summarizing the current project construction status;
2. documents required by specific conditions to be submitted along with the monthly report. Each of these items should be identified in the transmittal letter.

### **ANNUAL REPORTS**

After the air district has issued a Permit to operate, the project owner shall submit annual reports instead of monthly reports. The reports are for each year of commercial operation and are due to the CPM and City of Ripon at a date agreed to by the CPM and City of Ripon. Annual reports shall be submitted over the life of the project unless otherwise specified by the CPM and City of Ripon. The report shall contain at a minimum:

1. a transmittal letter summarizing the current project operating status and an explanation of any significant changes to the facility operations during the year;
2. documents required by specific conditions to be submitted along with the annual report. Each of these items should be identified in the transmittal letter.

### **CONFIDENTIAL INFORMATION**

Any information which MID deems proprietary shall be submitted to the Commission Docket Unit (Mail Stop 4) to be processed pursuant to California

Code of Regulations Title 20 section 2505(a). Any information which is determined to be confidential shall be kept confidential as provided for in CCR Title 20 section 2501 et seq. Information deemed not to be confidential will become public information.

#### **ACCESS TO THE FACILITY**

The CPM, or other designated Commission staff or agent, shall be granted access at any time to the project site, transmission line right-of-way, and related sites.

## VI. FINDINGS AND CONCLUSIONS

Based upon our independent judgment and the evidence of record as a whole, we make the following findings and reach the following conclusions:

1. The MEGS project is a simple-cycle gas fired power plant, nominally rated at 95-MW in capacity. The project's related facilities include 0.25 miles of transmission tie line, 0.25 miles of gas supply pipeline, and water supply and waste water tap lines.
2. The MEGS project and its related facilities, with implementation of the mitigation agreed to by Applicant and that contained in the Conditions of Exemption, will comply with all applicable laws and will not create significant adverse impacts on the environment or on energy resources. There is no disagreement in expert opinion concerning these matters, or substantial evidence contradicting them.
3. The process followed in arriving at this SPPE Decision and Mitigated Negative Declaration conforms with the requirement of the appropriate portions of the Public Resources Code, as well as implementing regulations and Guidelines.
4. This Decision and Mitigated Negative Declaration reflect the independent judgment of the California Energy Commission, acting as lead agency in reviewing the MEGS project and its related facilities.
5. The record indicates a measure of public concern regarding the project's impacts.
6. The record does not contain substantial evidence which supports a fair argument that the project, as mitigated, would create a significant adverse impact in any environmental or engineering discipline reviewed. This specifically includes the disciplines of Air Quality, Energy Resources, Noise, and Visual Resources.
7. The Compliance and Monitoring Plan included herein meets the requirements of the Public Resources Code and adequately ensures that the Conditions of Exemption will be implemented and enforced.
8. The evidence of record establishes that the MEGS project, as mitigated, will not cause significant impacts to air quality from its construction or operation.

9. The use of the SCONO<sub>x</sub> control technology is not feasible for the MEGS project.
10. No substantial evidence of record establishes that the use of the SCONO<sub>x</sub> technology or limitation of ammonia slip to 5 ppm is either feasible or necessary to prevent significant adverse environmental impacts.
11. No substantial evidence of record shows that the project, as mitigated, will create significant adverse noise impacts
12. The project will be located in an existing industrial area with elevated noise levels.
13. The project is not permitted to produce tonal noises.
14. The MEGS project will be subject to the City of Ripon's Site Plan Permit Process.
15. The project will cause a short-term adverse visual impact. The evidence of record establishes that this impact is will be mitigated to below a level of significance.
16. As mitigated, the project will not cause or contribute to a significant adverse cumulative visual impact.
17. MID's primary generation resource need is for peaking power.
18. The project can fulfill its stated purposes by operating up to 5,000 hours per year.
19. The proposed simple-cycle configuration is preferable to a combined cycle for producing peaking power.
20. Operation of the MEGS project will not result in adverse effects on local or regional energy supplies, or require additional energy supply capacity.
21. The evidence does not contain an analysis of impacts upon energy resources were the MEGS project to operate 8,760 hours per year.
22. The MEGS project may be operated up to 5,000 hours per year without resulting in a wasteful or inefficient use of energy.
23. Potential environmental justice impacts of the project were analyzed and found to be insignificant.

We therefore conclude that the MEGS project is eligible for an exemption from the Application for Certification provisions of the Commission's power plant licensing process.

## VII. ORDER

The Small Power Plant Exemption for the Modesto Irrigation District's Modesto Electric Generation Station is granted. We adopt the Committee's recommended Proposed Decision and Mitigated Negative Declaration for the Modesto Electric Generation Station Project.

Commission staff shall ensure that the Decision and Mitigated Negative Declaration are submitted for public and agency review as required by the pertinent portions of the Public Resources Code and implementing Guidelines.

Dated \_\_\_\_\_ in Sacramento, California.

\_\_\_\_\_  
WILLIAM J. KEESE  
Chairman

\_\_\_\_\_  
ROBERT PERNELL  
Commissioner

\_\_\_\_\_  
ARTHUR H. ROSENFELD  
Commissioner

\_\_\_\_\_  
JAMES D. BOYD  
Commissioner

\_\_\_\_\_  
JOHN L. GEESMAN  
Commissioner

.....

Appendix A: *Final Initial Study*

Appendix B: *Errata to Final Initial Study*

Appendix C: *Exhibit List*



# ***APPENDICES***

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Appendix A: *Final Initial Study*

Appendix B: *Errata to Final Initial Study*

Appendix C: *Exhibit List*



# ***APPENDICES***

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